

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS: 07-0067
Gross Retail Tax
For the Year 2005

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of the document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Aircraft Purchase – Gross Retail Tax.

Authority: IC § 6-8.1-5-1(b); IC § 6-2.5-2-1; IC § 6-2.5-5-8; 45 IAC 2.2-5-15.

Taxpayer argues that it was not subject to gross retail tax on the purchase of his aircraft because the aircraft was purchased in order to rent or lease it to others during the regular course of taxpayer's business.

STATEMENT OF FACTS

On March 30, 2005, taxpayer purchased an aircraft for \$183,000. On January 1, 2006, taxpayer submitted an "Application for Aircraft Registration or Exemption." On that application, taxpayer claimed an exemption from sales or use tax on the ground that taxpayer was a registered retail merchant engaged in the business of renting and leasing the aircraft to others.

On February 3, 2006, the Department of Revenue (Department) sent taxpayer a letter requesting documentation sufficient to establish that taxpayer was in the business of renting or leasing the aircraft.

On March 16, 2006, the Department sent taxpayer a request for "additional documentation" to "clarify all use of the subject aircraft and that sales tax is being collected on all use[.]"

On August 17, 2006, the Department sent taxpayer a letter requesting "additional information."

On September 25, 2006, the Department sent a follow-up letter requesting "additional documentation."

After reviewing the documentation available, the Department on November 20, 2006, sent taxpayer a letter "disallowing the exemption claimed for rental/leasing of the aircraft . . . based on review of the documentation and files." On November 27, 2006, the Department issue a "proposed assessment" based on the original purchase price of the aircraft.

Taxpayer responded on January 5, 2007, by filing a protest. The matter was assigned to the hearing officer, and an administrative hearing was conducted during which taxpayer explained the basis for his protest. This Letter of Findings results.

I. Aircraft Purchase – Gross Retail Tax.

DISCUSSION

Indiana imposes a gross retail (sales) tax on retail transactions in Indiana. IC § 6-2.5-2-1. The legislature has provided a number of exemptions to the imposition of that tax. *See* IC § 6-2.5-5-1 to -40. One of those exemptions is provided at IC § 6-2.5-5-8(b) which states that, “Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property.”

Therefore, if taxpayer bought the aircraft for the purpose of leasing it to others, taxpayer was not required to pay sales tax on the initial purchase price because taxpayer bought the plane for “an exempt purpose.”

The rental exemption set out in IC § 6-2.5-5-8 is further explained in 45 IAC 2.2-5-15, which states:

(a) The state gross retail tax shall not apply to sales of any tangible personal property to a purchaser who purchases the same for the purpose of reselling, renting or leasing, in the regular course of the purchaser's business, such tangible personal property in the form in which it is sold to such purchaser.

(b) General rule. Sales of tangible personal property for resale, renting or leasing are exempt from tax if all of the following conditions are satisfied:

- (1) The tangible personal property is sold to a purchaser who purchases this property to resell, rent or lease it;
- (2) The purchaser is occupationally engaged in reselling, renting or leasing such property in the regular course of his business; and
- (3) The property is resold, rented or leased in the same form in which it was purchased.

In support of its contention that taxpayer was engaged in the business of renting or leasing the aircraft, taxpayer supplied a copy of a Lease Agreement with a medical service provider. The Lease Agreement is “made effective as of December 01, 2005.” In the Agreement, the medical service provider promised to pay taxpayer \$187.50 per hour for use of the aircraft. The medical service provider promised to pay taxpayer a minimum of \$22,000 each year the Agreement was in effect.

Pursuant to that Agreement, taxpayer has provided information indicating that it paid sales tax on the stream of rental income obtained from the medical service provider. Taxpayer has provided

evidence – and the Department’s own records confirm that evidence – indicating that taxpayer received rental income commensurate with the terms of the Agreement and paid sales tax on that rental income.

In addition, taxpayer has demonstrated that for the period immediately following the purchase the aircraft on March 30, 2005, the aircraft’s avionics systems were being rebuilt and thus the aircraft was effectively unavailable for rental for approximately eight months.

Pursuant to IC § 6-8.1-5-1(b), taxpayer has met its burden of demonstrating that the aircraft was purchased for the purpose of renting or leasing during the regular course of taxpayer’s business.

FINDING

Taxpayer’s protest is sustained.

DK/JR/BK – September 4, 2007.